

RECORDATION NO. 8077 Filed & Recorded

OCT 14 1975 - 12 50 PM

INTERSTATE COMMERCE COMMISSION

L E A S E

COUNTERPART  
No. 4 of 9

LEASE, dated as of August 21, 1975, between NORTH WESTERN COMMUNICATIONS, INC., an Illinois corporation (hereinafter called the "Lessor" or the "Owner") and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the "Lessee" or the "Railroad").

WHEREAS, the Lessor and CHANDLER LEASING DIVISION OF PEPSICO LEASING CORPORATION (the "Secured Party") have agreed, by letter agreement dated as of July 29, 1975, to enter into a security agreement (the "Security Agreement") by which the Lessor will grant to the Secured Party a security interest in the equipment described in Schedule A hereto (the "Equipment") for the purpose of securing the payment and performance of the Lessee's obligations and indemnities with respect to the installation, removal and return of auto racks (the "Racks") purchased by the Secured Party for lease to the Lessee under an Equipment Lease dated as of July 29, 1975 (the "Secured Party Lease") between the Secured Party and the Lessee; and

WHEREAS, the Lessee desires to lease from the Lessor, subject and subordinate to the Secured Party's security interest, all the units of the Equipment, at the rentals and for the term and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the recitals hereto and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions, but subject and subordinate in all respects to the rights and remedies of the Secured Party under the Security Agreement:

1. Delivery and Acceptance. The Lessor will cause each unit of the Equipment to be delivered to the Lessee under this Lease (hereinafter called this "Lease" or this "Agreement") with freight charges prepaid, at such place or places and at such time or times as the Lessee shall designate. On delivery of each unit of the Equipment hereunder the Lessee will assume with respect thereto the responsibilities and risk of loss.

2. Rentals. The Lessee agrees to pay to the Lessor as rental for the units of the Equipment subject to this Lease the following rentals:

(a) Interim Rental. For each unit of Equipment, \$3.53 (the "Interim Rental") per day for the period from and including August 21, 1975, to and including September 30, 1975, due and payable on September 30; and

(b) Fixed Rental. For each unit of Equipment, 52 consecutive quarterly installments (the "Fixed Rental") in the amount of \$317.37, payable quarterly in arrears commencing on December 31, 1975, and payable on March 30, June 30, September 30 and December 31 thereafter, to and including September 30, 1988.

The Lessee irrevocably agrees that all payments provided for in this Lease (including those payments required pursuant to Section 4 hereof) shall be paid for the account of the Lessor at the address specified in Section 20 hereof unless otherwise provided in writing.

The Lessee agrees to pay interest at the rate of one hundred ten per cent (110%) of the Prime Rate (as hereinafter defined) on all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms of this Lease. The term Prime Rate means the rate per annum charged by Continental Illinois National Bank and Trust Company of Chicago for ninety (90) day unsecured commercial loans to large corporate borrowers of the highest credit standing.

3. Term; Lease Subject to Security Agreement; Lessor's Default. The term of this Lease as to each unit of the Equipment shall begin upon acceptance thereof by the Lessee pursuant to Section 1 hereof and, subject to the provisions of Sections 4 and 14 hereof, and to the rights and remedies of the Secured Party under the Security Agreement, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder. Upon the expiration of the term of this Lease as to any unit of the Equipment, the Lessee will, at its expense, deliver such unit to the Lessor in good order and running condition, normal wear and tear excepted, free of all charges at the point on the line of railroad of the Lessee designated by the Lessor.

All rights and obligations under this Lease and in and to the Equipment are in all respects subject and subordinate to the rights and remedies of the Secured Party under the Security Agreement. If an Event of Default should occur under the Security Agreement, the Secured Party may terminate this Lease (or rescind such termination), and take such other action with respect to the Equipment as is provided in the Security Agreement or herein.

4. Lost, Destroyed or Damaged Equipment. In the event that any unit of the Equipment shall be worn out, lost, destroyed or, in the opinion of the Lessee, irreparably damaged or otherwise rendered unsuitable or unfit for use from any cause whatsoever, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (hereinafter called a "Casualty Occurrence") during the term of this Lease, the Lessee shall notify the Lessor within twenty (20) days after it has determined that a unit has suffered a Casualty Occurrence. The Lessee shall, within twenty (20) days of such notification, pay to the Lessor an amount equal to

one hundred thirty per cent (130%) of the amount to be deposited by the Lessor with the Secured Party in respect of such unit under Section 2 of the Security Agreement, or forty per cent (40%) of the purchase price of such unit (as shown in Schedule A hereto), whichever is greater, and upon such payment by the Lessee such unit shall be excluded from the term "Equipment" hereunder. The Lessee shall remit to the Lessor the excess, if any, of any damages received by the Lessee for such unit by reason of such Casualty Occurrence, over the amount payable by the Lessee to the Lessor hereunder.

5. Maintenance and Repair. The Lessee will at all times maintain the Equipment in good order and repair at its expense.

6. Compliance with Laws and Rules. During the terms of this Agreement the Lessee will comply in all respects with all applicable laws.

7. Inspections. The Lessor and the Secured Party shall have the right, by their agents, to inspect the Equipment and the Lessee's records with respect thereto.

8. Possession and Use. The Lessee, so long as it shall not be in default under this Agreement and subject to the provisions of Section 3 hereof, shall be entitled to the possession of the Equipment and the use thereof; and the possession and use of units of rolling stock shall be upon the lines of railroad owned or operated by the Railroad either alone or jointly with another and whether under lease or otherwise, and upon the lines of railroad owned or operated by any railroad company controlled by or under common control with the Railroad, or over which the Railroad has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic.

9. Prohibition Against Liens. The Lessee will satisfy and discharge any and all sums claimed by any party by, through or under the Lessee or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment or any unit thereof; except that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Secured Party, adversely affect the security interest or rights of the Secured Party in or to the Equipment or otherwise under the Security Agreement. Any amounts paid by the Lessor or the Secured Party in discharge of liens, charges or security interests upon the Equipment for which the Lessee is responsible hereunder shall be repaid by the Lessee upon demand.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

10. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessee in respect of taxes (other than income taxes, gross receipt taxes, franchise taxes, excess profit taxes and similar taxes), which expense the Lessee assumes and agrees to pay on demand, in addition to the rentals and other amounts payable hereunder.

11. Marking of Equipment. The Lessee will cause each unit of the Equipment to be kept numbered with the Railroad's identifying number as set out in Schedule A hereto, and will cause each side of each such unit to be kept plainly, distinctly, permanently and conspicuously marked "SUBJECT TO A SECURITY INTEREST UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c" or other appropriate words designated by the Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security interest of the Secured Party to the Equipment and its rights under the Security Agreement. The Lessee will replace promptly any such marking, which may be removed, defaced or destroyed. The Lessee will not change the numbers of any such units except with the consent of the Lessor and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and, if such units are rolling stock, shall promptly be filed and recorded by the Lessee with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered "Chicago and North Western," or "C.N.W.," or may label the Equipment with the emblem, trademark, or slogan of the

Railroad, or may letter the Equipment with the name or initials of any affiliated railroad company which is permitted to use such Equipment as hereinafter provided, or may letter it in some other appropriate manner for convenience of identification of the interest of the Lessor and the Railroad therein.

12. Lessee's Indemnities. The Lessee agrees to indemnify and save harmless the Lessor from and against all losses, damages, injuries, liabilities, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Secured Party of its security interest in the Equipment or out of the use and operation thereof by the Railroad during the term of this Lease. This covenant of indemnity shall continue in full force and effect notwithstanding the termination or release of the Secured Party's security interest, or the termination of this Lease in any manner whatsoever.

13. Assignments. The Lessee will not sell, assign, transfer or otherwise dispose of the Equipment or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Lessor, which shall not be unreasonably withheld. An assignment or transfer to the Railroad or to a railroad company or other purchaser which shall acquire or lease all or substantially all the lines of railroad of the Railroad and which, by execution of an appropriate instrument satisfactory to the Lessor, shall assume and agree to perform each and all of the obligations and covenants of the Lessee hereunder, or an assignment by the Lessee to one of the Railroad's wholly owned subsidiary companies, shall not be deemed a breach of this covenant, provided that the Lessee (with binding effect upon successors of the Lessee) agrees not to be released as a primary obligor for the payment when due and payable (whether by acceleration or otherwise) of the rentals due hereunder on the date of any such assignment or transfer.

Subject to the rights of the Secured Party under the Security Agreement and subject to the provisions of Section 2 hereof, all or any of the rights, benefits and advantages of the Lessor under this Agreement, including the right to receive the payments herein provided to be made by the Lessee, may be assigned by the Lessor and reassigned by any assignee at any time or from time to time.

Upon any such assignment either the assignor or the assignee shall give written notice to the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Lessor's right and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Lessee of the notification of any such assignment, all payments thereafter to be made by the Lessee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

In the event of any such transfer or assignment, or successive transfers or assignments by the Lessor, of its interest in the Equipment and of its rights hereunder in respect thereof, the Lessee will, whenever requested by such transferee or assignee, change the marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such marking to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such marking for use on equipment covered by security agreements with respect to railroad equipment. The cost of marking with respect to the first assignee of the Lessor's rights under this Agreement and with respect to any subsequent assignment will be borne by the assignee.

14. Defaults. Any of the following events shall constitute an Event of Default hereunder:

- (a) The Lessee shall fail to pay in full, when due and payable hereunder, any rental payable by the Lessee as hereinabove provided and such failure shall continue for more than five (5) business days after written notice from the Lessor; or
- (b) The Lessee shall, for more than thirty (30) days after the Lessor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Lessor for such compliance; or

- (c) A proceeding in reorganization, bankruptcy or insolvency is instituted by or against the Lessee or its property and, unless such proceeding is dismissed within sixty (60) days, stayed or otherwise rendered ineffective, the debtor in reorganization or any trustee or receiver appointed therein fails to adopt and become bound by the terms, provisions and conditions of this Agreement within sixty (60) days after such appointment or designation; or the Lessee makes an assignment for the benefit of its creditors; or
- (d) The Lessee shall make or suffer any unauthorized assignment or transfer of the right of possession of any unit of the Equipment and shall fail or refuse to cause such assignment or transfer to be cancelled or to make provision satisfactory to the Lessor within thirty (30) days after written notice from the Lessor demanding such cancellation;

then at any time after the occurrence of such an event of default the Lessor, at its option may:

- (a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
- (b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such accrued number of days in such full rental period and the denominator is the total number of days in such full rental period)

and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each unit of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such unit for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the unit during such period, such present worth to be computed in each case on a basis of a rate of 7-1/2% per annum, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease, other than for the payment of rental.

15. Remedies. In case the Lessor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of railroad of the Lessee for the delivery of the Equipment to the Lessor, the Lessee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be designated by the Lessor and shall there deliver the Equipment or cause it to be delivered to the Lessor; and, at the option of the Lessor, the Lessor may keep the Equipment on any of the lines of railroad or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge to the Lessor for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof.

Each and every power and remedy hereby specifically given to the Lessor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Lessor. All such



powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

The Lessee will pay all reasonable expenses, including attorney's fees, incurred by the Lessor in enforcing its remedies under the terms of this Agreement. In the event that the Lessor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Lessor may recover reasonable expenses, including attorney's fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interest hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Lessor hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

16. Extension Not A Waiver. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Lessor shall impair or affect the Lessor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Lessee shall not otherwise alter or affect the Lessor's rights or the obligations of the Lessee hereunder. The Lessor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Lessee or the Lessor's rights hereunder with respect to any subsequent payments or default therein.

17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than a lease, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Lessee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a lease and enforced as such.

18. Recording. The Lessee will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Lessee will from

time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of counsel for the Lessor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Lessee will promptly furnish to the Lessor certificates or other evidences of such filing and recording satisfactory to the Lessor.

19. Payment of Expenses. The Lessee will pay all reasonable costs, charges, and expenses, except the counsel fees of the Lessor and of assignees of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing registration or recording of this Agreement, of any instrument supplemental to or amendatory of this Agreement and of any certificate of the payment of the rentals due hereunder.

20. Notice. Any notice hereunder to the Lessee shall be deemed to be properly served if delivered or mailed to the Lessee at 400 West Madison Street, Chicago Illinois 60606, or at such other address as may have been furnished in writing to the Lessor by the Lessee. Any notice hereunder to the Lessor shall be deemed to be properly served if delivered or mailed to the Lessor at 400 West Madison Street, Chicago, Illinois 60606, or at such other address as may have been furnished in writing to the Lessee by the Lessor. Any notice hereunder to any assignee of the Lessor or of the Lessee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Lessee or the Lessor, as the case may be, by such assignee.

21. Section Headings. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

22. Effect and Modification of Agreement. This Agreement exclusively and completely states the rights of the Lessor and the Lessee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to such Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

23. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together

shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

NORTH WESTERN COMMUNICATIONS, INC.

By J. Paul Baer  
Vice President

(SEAL)

ATTEST

G. L. Vargason  
Assistant Secretary

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By J. M. Butler  
Vice President

(SEAL)

ATTEST

G. L. Vargason  
Assistant Secretary

STATE OF ILLINOIS     )  
                              )   SS  
COUNTY OF COOK        )

On this 12<sup>th</sup> day of September, 1975  
before me personally appeared I. Robert Ballin  
to me personally known, who, being by me duly sworn, says  
that he is the Vice President of NORTH WESTERN COMMUNICATIONS,  
INC.; that one of the seals affixed to the foregoing  
instrument is the corporate seal of said corporation, that  
said instrument was signed and sealed on behalf of said  
corporation by authority of the Board of Directors and he  
acknowledged that the execution of the foregoing instrument  
was the free act and deed of such corporation.

(NOTARIAL SEAL)

My Commission expires:

February 25, 1978

Margaret Haulon  
Notary Public  
MARGARET HAULON  
Notary Public  
Du Page Co. Illinois  
My Commission Expires Feb. 25, 1978

STATE OF ILLINOIS     )  
                              )   SS  
COUNTY OF COOK        )

On this 12<sup>th</sup> day of September, 1975  
before me personally appeared J.M. Butler  
to me personally known, who, being by me duly sworn, says  
that he is a Vice President of the CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY, that one of the seals affixed to the  
foregoing instrument is the corporate seal of said corporation,  
that said instrument was signed and sealed on behalf of said  
corporation by authority of its Board of Directors and he  
acknowledged that the execution of the foregoing instrument  
was the free act and deed of said corporation.

(NOTARIAL SEAL)

My Commission expires:

Dec. 7, 1977

Marjorie Kayer  
Notary Public